



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

518-804-4000 telephone • 512-804-4811 fax • www.tdi.texas.gov

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

M.A.P.A. ON BEHALF OF
UNIVERSITY HEALTH SYSTEM
12000 FORD ROAD, STE 400
DALLAS, TX 75234

DWC Claim #:
Injured Employee:
Date of Injury:
Employer Name:
Insurance Carrier #:

Respondent Name

BEXAR COUNTY

Carrier's Austin Representative Box

Box Number 29

MFDR Tracking Number

M4-98-4951-01

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "The health care provider's position is that fair and reasonable reimbursement should be paid on inpatient claims with dates of service on after December 6, 1995. The per diem rates paid are not fair and reasonable because they have been invalidated by the Texas Supreme Court and should not be used as a standard for determining fair and reasonable. The proper standard for determining fair and reasonable is the old law standard of fair and reasonable—not the invalidated per diem rates that were adopted when the new law was passed. A similar situation arose when old law claims were paid at the per diem rates because they had new law dates of service. Over the years, MAPA has submitted numerous claims to TWCC dispute resolution on behalf of many health care providers. In each case, the health care provider was awarded 100% of the total charges, less non-covered items such as cable television....We believe that this award and other similar awards clearly establish that TWCC defines 'fair and reasonable' as 100% of the total charges, less non-covered items."

Amount in Dispute: \$9,582.79

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "Our Methodology will be a Fair and Reasonable Recommendation of 85% on allowable charges, which has been historically accepted as Fair and Reasonable by hospitals that file for Medical Dispute Resolution. In the majority of the cases submitted, 85% of allowable charges constitutes approximately 58% above the allowed amount per rule 134.400, and the new rule 134.401. Rule 134.401 (TWCC's new 'Acute Care Inpatient Hospital Fee Guideline effective 8/1/97) is similar to the voided rule. The old rule per diem allowed \$600 for medical, \$1100 for surgical and \$1600 for ICU and CCU stays. The new schedule represents the same per diem Methodology and allows \$870 for medical, \$1118 for surgical, \$1560 for ICU and CCU stays. Since the percentage reimbursement Methodology of 85% of allowable charges has been historically accepted as Fair and Reasonable and compared to the Reimbursement Methodology of the past and present, we strongly feel that our recommendation is Fair and Reasonable."

Response Submitted by: Gallagher Bassett Services, Inc, 900 Isom Rd., Ste 110, San Antonio, TX 78216

SUMMARY OF FINDINGS

Date(s) of Service	Disputed Services	Amount In Dispute	Amount Due
December 28, 1995 Through December 29, 1995	Inpatient Hospital Services	\$9,582.79	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. Former 28 Texas Administrative Code §133.305, effective June 3, 1991, 16 *Texas Register* 2830, sets out the procedures for resolving medical fee disputes.
2. Former 28 Texas Administrative Code §134.1(f) effective October 7, 1991, 16 *Texas Register* 5210, sets out the reimbursement guidelines for the services in dispute.
3. This request for medical fee dispute resolution was received by the Division on July 14, 1997.
4. The services in dispute were reduced/denied by the respondent with the following reason codes:
 - 592- The above provider has requested reconsideration of the attached charges. Recommended payment of additional allowances.
 - Acute Care Guidelines has been declared void. Add'l pmt at F/R.

Findings

1. 28 Texas Administrative Code §133.305(a), effective June 3, 1991, 16 *Texas Register* 2830, requires that "A request for review of medical services and dispute resolution, as described in the Texas Workers' Compensation Act (the Act), §8.26, shall be submitted to the commission at the division of medical review in Austin, no later than one calendar year after the date(s) of service in dispute." The applicability of the one-year filing deadline from the date(s) of service in dispute was confirmed in the court's opinion in *Hospitals and Hospital Systems v. Continental Casualty Company*, 109 *South Western Reporter Third* 96 (Texas Appeals – Austin, 2003, petition for review denied). Per 28 Texas Administrative Code §102.3(a)(1), effective January 1, 1991, 15 *Texas Register* 6747, "In counting a period of time measured by days, the first day is excluded and the last day is included." The request for dispute resolution of services rendered on date of service December 28, 1995 through December 29, 1995 was received by the Division on July 14, 1997. Review of the submitted documentation finds that the request was submitted more than one year after the date of service. The Division finds that the request for dispute resolution was not submitted timely. The Division concludes that requestor has not met the requirements of §133.305(a).
2. This dispute relates to inpatient hospital services. The former agency's *Acute Care Inpatient Hospital Fee Guideline* at 28 Texas Administrative Code §134.400, 17 *TexReg* 4949, was declared invalid in the case of *Texas Hospital Association v. Texas Workers' Compensation Commission*, 911 *South Western Reporter Second* 884 (Texas Appeals – Austin, 1995, writ of error denied January 10, 1997). As no specific fee guideline existed for acute care inpatient hospital services during the time period that the disputed services were rendered, the 1991 version of 28 Texas Administrative Code §134.1(f) applies as the proper Division rule to address fee payment issues in this dispute, as confirmed by the Court's opinion in *All Saints Health System v. Texas Workers' Compensation Commission*, 125 *South Western Reporter Third* 96 (Texas Appeals – Austin, 2003, petition for review denied). 28 Texas Administrative Code §134.1(f), effective October 7, 1991, 16 *Texas Register* 5210, requires that "Reimbursement for services not identified in an established fee guideline shall be reimbursed at fair and reasonable rates as described in the Texas Workers' Compensation Act, sec. 8.21(b), until such period that specific fee guidelines are established by the commission."
3. The former Texas Workers' Compensation Act section 8.21 was repealed, effective September 1, 1993 by Acts 1993, 73rd Legislature, chapter 269, section 5(2). Therefore, for services rendered on or after September 1, 1993, the applicable statute is the former version of Texas Labor Code section 413.011(b), Acts 1993, 73rd Legislature, chapter 269, section 1, effective September 1, 1993, which states, in pertinent part, that "Guidelines for medical services fees must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. The commission shall consider the increased security of payment afforded by this subtitle."
4. 28 Texas Administrative Code §133.305(d)(7), effective June 3, 1991, 16 *Texas Register* 2830, requires that

the request shall include "copies of all written communications and memoranda relating to the dispute." Review of the documentation submitted by the requestor finds that the request does not include a copy of medical records or other written communications and memoranda pertinent to the dispute. The Division concludes that the requestor has not met the requirements of §133.305(d)(7).

5. Review of the submitted documentation finds that:

- The requestor's position statement asserts that "The health care provider's position is that fair and reasonable reimbursement should be paid on inpatient claims with dates of service on after December 6, 1995. The per diem rates paid are not fair and reasonable because they have been invalidated by the Texas Supreme Court and should not be used as a standard for determining fair and reasonable. The proper standard for determining fair and reasonable is the old law standard of fair and reasonable—not the invalidated per diem rates that were adopted when the new law was passed. A similar situation arose when old law claims were paid at the per diem rates because they had new law dates of service. Over the years, MAPA has submitted numerous claims to TWCC dispute resolution on behalf of many health care providers. In each case, the health care provider was awarded 100% of the total charges, less non-covered items such as cable television....We believe that this award and other similar awards clearly establish that TWCC defines 'fair and reasonable' as 100% of the total charges, less non-covered items."
- The Division finds that a reimbursement methodology based upon payment of a hospital's billed charges, or a percentage of billed charges, does not produce an acceptable payment amount. Such a reimbursement methodology would leave the ultimate reimbursement in the control of the hospital, thus defeating the statutory objective of effective cost control and the statutory standard not to pay more than for similar treatment of an injured individual of an equivalent standard of living. It also provides no incentive to contain medical costs. Therefore, a reimbursement amount that is calculated based upon a percentage of a hospital's billed charges cannot be favorably considered when no other data or documentation was submitted to support that the payment amount being sought is a fair and reasonable reimbursement for the services in dispute.
- The requestor does not discuss or explain how payment of the amount sought would result in a fair and reasonable reimbursement for the services in this dispute.
- The requestor did not submit documentation to support that the payment amount being sought is a fair and reasonable rate of reimbursement for the disputed services.
- The requestor does not discuss or explain how payment of the requested amount would satisfy the requirements of 28 Texas Administrative Code §134.1.

The request for additional reimbursement is not supported. Thorough review of the documentation submitted by the requestor finds that the requestor has not demonstrated or justified that payment of the amount sought would be a fair and reasonable rate of reimbursement for the services in dispute. Additional payment cannot be recommended.

Conclusion

The Division would like to emphasize that individual medical fee dispute outcomes rely upon the evidence presented by the requestor and respondent during dispute resolution, and the thorough review and consideration of that evidence. After thorough review and consideration of all the evidence presented by the parties to this dispute, it is determined that the submitted documentation does not support the reimbursement amount sought by the requestor. The Division concludes that this dispute was not filed in the form and manner prescribed under 28 Texas Administrative Code §133.305(d). The Division further concludes that the requestor failed to support its position that additional reimbursement is due. As a result, the amount ordered is \$0.00.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

Authorized Signature

Signature

Medical Fee Dispute Resolution Officer

October 21, 2011

Date

YOUR RIGHT TO REQUEST AN APPEAL

Either party to this medical fee dispute has a right to request an appeal. A request for hearing must be in writing and it must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.**

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.